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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,022	07/13/2001	Chon-si Lai	6816.US.01	2509

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ROSS PRODUCTS DIVISION OF ABBOTT LABORATORIES  
DEPARTMENT 108140-DS/1  
625 CLEVELAND AVENUE  
COLUMBUS, OH 43215-1724

EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 06/18/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Applicati n No.

09/905,022

Applicant(s)

LAI ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this c mmunication appears n the cover sheet with the corresp nd nce address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

Examiner acknowledges receipt of IDS filed 11/04/02 and request for extension of time and amendment A filed 03/25/03. Claims 1-3 and 5-15 are pending.

1. Applicant's arguments with respect to claims 1-3 and 5-14 have been considered but are moot in view of the new ground(s) of rejection.

#### *Claim Rejections - 35 USC § 103*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3 and 5-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaussan et al. (EP 0 898 900).

Jaussan teaches a liquid nutritional composition comprising a protein source, a lipid source, a carbohydrate source and a fiber mixture of viscous soluble fiber and inulin (claim 2). The protein source is from milk protein or whey protein or casein protein or soy protein or mixtures of these proteins; and the protein source provides about 10-20% of the energy (page 3, lines 40-45). The carbohydrate source provides about 40-50% of the energy (page 3, lines 43-56); and the lipid source provides about 30%-50% of the energy (page 4, lines 7-10).

Jaussan teaches the liquid nutritional formulation of the invention except that the prior art is silent on the weight percent of the protein source. However, one of ordinary skill in the art would know routine experimental procedures of converting weight of protein to energy units. In this case the, the prior art discloses the energy provided by the proteins and other sources of protein are rice, oat, pea and mixtures thereof (page 3, line 43). Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to prepare the liquid

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nutritional formulation of Jaussan. One having ordinary skill in the art would have been motivated to optimize the formulation by optimizing the amount of the casein protein and the other proteins with the expectation that the formulation will provide the required energy to the individual taking it.

Claim 15 remains allowable because the prior art does not teach method recited in the claim.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hahn (US 6,241,996) discloses enteral nutritional dietary composition and the composition comprises about 10% in weight caseinates (abstract, column 3, lines 38 and 39 and column 5, lines 12-22), about 20% soy protein (column 4, lines 22-26), a protein stabilizer, water, carbohydrate source and oil (claims 1-27 and example 5).

Hoie (US 6,268,011) discloses a composition comprising soy protein, soybean fibers, optional additional protein source, carbohydrate source, fat source, flavoring agents, vitamins, minerals, electrolytes and trace elements (abstract).

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara  
June 15, 2003

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600  
